

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

STATE OF ILLINOIS, *et al.*,

Plaintiffs,

v.

No. 1:25-cv-206-WES-PAS

FEDERAL EMERGENCY
MANAGEMENT AGENCY, *et al.*,

Defendants.

**PLAINTIFF STATES' STATUS REPORT AND
REQUEST FOR STATUS CONFERENCE**

Plaintiff States submit this status report to accompany their request for a status conference in this matter, submitted concurrently to the Court by electronic mail.

1. On March 27 and April 18, 2025, defendants promulgated new Department of Homeland Security (“DHS”) standard terms and conditions for “all new federal awards … for which the federal award date occurs in FY 2025.” ECF 21-5, 21-6. On May 13, 2025, Plaintiff States filed this suit seeking declaratory and injunctive relief against certain new provisions, referred to as the Civil Immigration Conditions. ECF 1. Plaintiff States moved for a preliminary injunction six days later, ECF 20, and the Court entered an expedited briefing schedule and set a hearing for June 17, 2025. Defendants responded to the motion on Friday, June 6, ECF 50, with Plaintiff States’ reply currently due on Thursday, June 12.

2. Defendants’ response and an accompanying declaration from defendant David Richardson, the senior official performing the duties of the administrator of the Federal Emergency Management Agency (“FEMA”), assert that the Civil Immigration Conditions no longer apply universally, despite their placement in the DHS standard terms and conditions. Richardson states

that FEMA has “made a final determination that Immigration Conditions do *not* apply to” twelve grant programs administered by FEMA. ECF 50-1 ¶ 14. Richardson does not specify the form that this final determination took or the date when it was made. As of this writing, the standard terms and conditions themselves remain unchanged on the DHS website and do not reflect any diminished scope of application. *See* Dep’t of Homeland Sec., *DHS Standard Terms and Conditions*, <https://www.dhs.gov/publication/dhs-standard-terms-and-conditions> (“Conditions”).

3. Given the discussion at the May 20, 2025 status conference, Plaintiff States seek to propose a procedural path that is appropriate for the litigation and the Court, while adequately and timely protecting the rights and interests of Plaintiff States. *See, e.g., Rhode Island Latino Arts v. Nat'l Endowment for the Arts*, ___ F. Supp. 3d __, 2025 WL 1009026 (D.R.I. Apr. 3, 2025). Accordingly, Plaintiff States provide this status report to explain why, in their view, a conference with the Court concerning next steps in this litigation would be appropriate in light of defendants’ filings. Although Plaintiff States welcome defendants’ apparent change in position, and would likewise welcome a resolution that would obviate the need for emergency relief at this time—for instance, by permitting the parties to brief all remaining disputes via cross-motions for summary judgment, as discussed at the May 20, 2025 status conference—defendants’ filings do not provide sufficient certainty for Plaintiff States to agree to such a resolution at this time.

4. First, defendants’ filings do not provide sufficient certainty as to those programs to which they attest that the Civil Immigration Conditions will *not* apply. Although the Richardson declaration states that FEMA has made a “final determination” that the Conditions will not apply to these programs, ECF 50-1 ¶ 14, as noted, *supra* ¶ 2, the version of the DHS standard terms and conditions posted on DHS’s website still contains the Civil Immigration Conditions and states that they will apply to “*all* new federal awards of federal financial assistance (federal awards) for which

the federal award date occurs in FY 2025.” Conditions, *supra*, at 1 (emphasis added). The Richardson declaration does not state that FEMA’s “final determination” regarding these programs has been communicated to FEMA program staff to correct the actions that FEMA has already taken to add the Civil Immigration Conditions to these grants. *See* ECF 50-1. For example, after the filing of Plaintiffs’ preliminary-injunction motion, in response to an inquiry to FEMA about the applicability of the Civil Immigration Conditions to a disaster relief grant that one Plaintiff State received, FEMA attached the latest fiscal year 2025 standard terms and conditions with all the Civil Immigration Conditions and indicated that they applied to the award. Given the number of grant programs, recipient agencies, and federal and state officials involved in applying for and administering the subject grants, Plaintiff States need, at minimum, certainty that the representations made in the filings are more than just a litigation position. *Cf. Rhode Island Latino Arts*, 2025 WL 1009026, at *4 (“The NEA will not require any applicant for any agency funds to certify their compliance with the EO during this time.”).

5. Second, defendants’ filings are ambiguous, contradictory, or silent as to whether the challenged conditions will be applied to multiple other grant programs that defendants administer and that are the subject of plaintiffs’ complaint and motion for a preliminary injunction. As non-exclusive examples of the ambiguities at issue:

- As to the State Recreational Boating Safety Grant Program, multiple Plaintiff States have pending requests to certify compliance with the Civil Immigration Conditions. Defendants appear to attest that the Civil Immigration Conditions still apply, ECF 50 at 5 n.3, but otherwise do not mention the program in their brief.
- As to the Nonprofit Security Grant Program, the Richardson declaration states that FEMA made a determination that the Civil Immigration Conditions do *not* apply, ECF 50-1 ¶ 14, but defendants’ brief at one point states that “FEMA *is* applying the Immigration Conditions” to it, ECF 50 at 19–20 (emphasis added).
- As to four other preparedness grants, the Richardson declaration states that “DHS is analyzing whether the Immigration Conditions can be applied,” ECF 50-1 ¶ 12,

but defendants' brief at one point states that "FEMA *is* applying the Immigration Conditions" to them, ECF 50 at 19–20 (emphasis added).

- As to other programs, defendants' filings are silent, and Plaintiff States nonetheless face imminent or expected requests to certify compliance. For instance, as to the BioWatch Program, multiple Plaintiff States were told by DHS on June 4, 2025, that the Civil Immigration Conditions would apply to an imminently forthcoming Notice of Funding Opportunity. Defendants' June 6 filings do not mention this program.

The above examples are not intended to be exhaustive but highlight some of the pressing questions facing Plaintiff States in light of and notwithstanding defendants' recent representations.

6. If some or all of these issues can be resolved, Plaintiff States would be open to other procedural paths in this matter, including converting the pending preliminary-injunction motion to a motion for summary judgment. Plaintiff States accordingly request a status conference with the Court this week in advance of the current June 12 deadline for their reply brief.

June 8, 2025

Respectfully submitted,

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